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MEMORANDUM

To: Chairman Johnson and members of the House Committee on Insurance and Pensions
From: Office of Revisor of Statutes
Date: February 7, 2022
Subject: **HB 2586; Enacting the Kansas work and save program act, allowing certain individuals to contribute to individual retirement accounts and providing administrative duties and powers of the state treasurer regarding such program.**

House Bill No. 2586 enacts the Kansas work and save program act. The state treasurer is the administrator of the Kansas work and save program. Such program would begin on or before July 1, 2023. The act allows individuals to contribute to individual retirement accounts offered by employers including through the use of payroll deductions.

Section 1 provides the citation and definitions for the act.

Section 2 establishes the treasurer as the trustee of the trust for the program and provides the powers, authorities and duties of the treasurer regarding the program.

Section 3 provides the requirements and the structure of the program. The program shall allow eligible individuals to voluntarily choose to contribute to an individual retirement account (IRA) under the program and allow employers to other payroll deductions for employees to make such contributions. Such contributions shall be made to a Roth IRA unless the employee elects to contribute to a traditional IRA. The treasurer shall design standard investment packages and employees shall be allowed to elect contribution rates that may be as low as 1% of salary or wages. In the treasurer's discretion, contribution rates may annually be increased by a rate of not more than 1% per year until a participant reaches a maximum of 8% with all such contributions subject to the contribution limits under federal internal revenue code.

Section 3 also provides penalties if a participating employer fails to enroll an eligible employee as required under this act. The penalty shall be \$250 for each eligible employee for each calendar year or portion thereof during which the employee was not enrolled in the program. The employee or state official may bring a civil action to require the participating employer to enroll the employee and shall recover such costs and reasonable attorney fees as may be allowed by the court. If the employee continues to be unenrolled, a penalty of \$500 shall be assessed.

No penalty shall be imposed when it is established that the employer did not know the failure existed and exercised reasonable diligence to meet the requirements of this section.

Section 4 requires the treasurer to adopt rules and regulations on or before July 1, 2023, to implement the program and enumerates specific requirements for such rules and regulations.

Section 5 provides that employers under the program shall not be liable for employees' decisions to participate or not participate in the program, investment decisions or investment performance or any loss or adverse tax consequences. No employer shall be considered a fiduciary in relation to the program

Section 6 provides that the state, the treasurer or any officer or employee thereof shall have no responsibility or liability for compliance by individuals with federal internal revenue code, for the payment of any benefits under the program and shall not guarantee any interest rate or other rate of return or investment performance. Section 6 also provides that debts, contracts and obligations of the program shall not be considered debts, contracts or obligations of the state and neither faith and credit nor the taxing power of the state is pledged for the payment of debts, contracts or obligations of the program.

Section 7 makes individual account information confidential and such information shall not be subject to the open records act.

Section 8 allows the treasurer to enter into intergovernmental agreements or memos of understanding with any state agency to receive outreach, technical assistance, enforcement and compliance services, collection or dissemination of information pertinent to the program subject to obligations of confidentiality.

Section 9 establishes the Kansas work and save administrative fund in the state treasury with the treasurer as the administrator of such fund. Moneys in the fund shall be used only to pay the administrative costs and expenses of the program.

Section 10 provides certain accounting, auditing and reporting requirements by the treasurer regarding the program. Each year a full audit of the books and accounts of the program shall be conducted by a CPA. On or before August 1 of each year, the treasurer shall submit to the governor and the legislature an audited financial report prepared in accordance with generally accepted accounting principles.

Section 11 requires the treasurer to implement the program so that individuals can begin contributing under the program not later than July 1, 2023. If the treasurer determines, however, that the program is preempted by ERISA, the treasurer shall not implement the program. If only a portion or aspect of the program is preempted, the treasurer shall implement the program in a severable fashion to the extent practicable.

Section 12 is a severability clause where if any provisions of the act are held invalid, the invalidity does not affect other sections of the act that can be given effect without the invalid provision.